

Volume 5

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JEFFREY S. WHITE, JUDGE

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UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No. CR. 10-376 (JSW)
)
OSHAN COOK,)
)
Defendant.) San Francisco, California
) Thursday, July 26, 2012
-----)

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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1 Thursday, July 26, 2012

2 (7:39 a.m.)

3 (Defendant present in court.)

4 (In open court; jury not present)

5 THE COURT: Please call the case.

6 DEPUTY CLERK: Calling Case Number Cr. 10-376,
7 United States vs. Oshan Cook.

8 Counsel, please state your appearances.

9 MR. AXELROD: Pete Axelrod and Chinhayi Coleman
10 Cadet for the United States.

11 THE COURT: Good morning.

12 MR. WEINBERG: Doron Weinberg for Oshan Cook, who
13 is in person present.

14 THE COURT: One just housekeeping type matter,
15 the CSO asked the Court if they could open the courtroom.
16 Of course they can and they should. This is a public
17 proceeding, so --

18 LAW CLERK: I just asked him to go back and make
19 sure jurors can get in. I'll have the public file in
20 quietly.

21 THE COURT: Thank you very much.

22 So good morning, everybody. So what up? To put
23 it in legal jargon here. I've actually done a fair
24 amount -- I, meaning my law clerk and I, have done a lot
25 of research on this. And there is one event I wanted to

1 put on the record. We obviously, with the agreement of
2 both counsel, excused the jury for the evening at roughly
3 3 o'clock yesterday. And when they went back into the
4 jury room -- and when my courtroom deputy clerk went back
5 to, she typically does, meaning the jack of all trades
6 went to empty their trash, saw that they were still
7 convened. And they indicated that they had another note,
8 immediately, that they wanted to hand to my courtroom
9 deputy clerk, and my courtroom deputy clerk told them that
10 they should come back and whatever they wanted to do they
11 should do tomorrow. Because they were officially excused.
12 And so whatever they did or wanted to do, I felt should
13 happen today.

14 But if they do present another note when they're
15 all here today, this morning, I wanted it clear on the
16 record that they, whatever they were going to communicate,
17 they were going to communicate yesterday after they were
18 officially excused by the Court, because the timing of
19 another note may be relevant, and I want -- of course, I
20 didn't want there to be any communications even by gesture
21 without disclosing it to counsel and the parties.

22 So we don't know what's going to happen. They're
23 not all here yet. And I brought you out, A, to tell you
24 that; and B, to kind of discuss a few what-ifs while we
25 had the benefit of time. On the expectation that we're

1 going to get another note pretty quickly from the jury,
2 and also upon having had the opportunity to research where
3 we are right now, even assuming there is not another note,
4 I wanted to get the input of counsel and let you know what
5 I'm thinking about, how I'm thinking about approaching it.

6 So I know that Mr. Weinberg had left a message
7 saying he didn't have secretarial help and wanting to know
8 if we could e-mail the authorities, and I didn't get that
9 until this morning, so that may be moot. But I know the
10 government didn't file anything.

11 Is there anything that the government wants to
12 say in addition to what we were discussing yesterday?

13 MR. AXELROD: No. I think -- we have reviewed
14 the model instruction and the authorities that go with
15 that, and I think it's our view at this point that we need
16 to see what the jury presents to us. The Court obviously
17 excused the jury last night, they may come back today. It
18 sounds like they had some more thoughts. So we'll see if
19 we get a note, and depending on what the specifics of that
20 note are, if any, we'll address them.

21 But at this point, the government's view is, we
22 need to just sit and wait and see if having another night
23 to sit on things and reflect brings them to a different
24 place today. And they'll let us know where they are, and
25 we can figure out what the next step is. But at this

1 point we don't think any action is necessary.

2 THE COURT: All right.

3 MR. WEINBERG: I agree that it's premature for
4 action. But logically, it seems to me -- I don't want to
5 speculate, unduly, but it seems to me, logically, that
6 note more likely than anything else was a note that said
7 there's no point in coming back tomorrow, we're
8 deadlocked. Which is why they sat back down and -- I mean
9 that's the most likely thing they would have done in 5
10 minutes or 10 minutes. So I think we should be ready
11 pretty soon to do whatever we're going to do next if they
12 do come back and say, Sorry, we're still deadlocked.

13 THE COURT: I think that's a fair point. And I
14 agree that although we -- the most we know right now is
15 that, from the jury's notes, is that they haven't reached
16 a verdict on any count, and as of yesterday, at 3:00, it
17 did not appear, you know, one way or the other that they
18 were hopelessly deadlocked, because the language was
19 somewhat ambiguous.

20 But the fact that they said, We haven't reached a
21 verdict on any count, and they're telling us that, and
22 then when I asked the question that you all agreed to,
23 Have you reached a verdict on any count, they said no,
24 there would -- one might speculate that there would be no
25 reason for them to tell me they hadn't reached a verdict

1 unless they felt they couldn't reach a verdict.

2 So let's leave it this way for now. I don't
3 think we're at a point where the jury has told us that
4 they're hopelessly deadlocked, but let's assume we get,
5 without, you know, prejudice to anybody changing their
6 position, since we're all here and since I at least had
7 the benefit of looking at some Ninth Circuit authority on
8 this, I would like to talk about what do we do if they
9 come back and they say words to the effect of, you know,
10 Why did you make us come back? We're hopelessly
11 deadlocked, or some words to the effect, that they are
12 hopelessly deadlocked, the -- just to share with you the
13 benefit of the Court's thinking and based upon some of the
14 authorities that I've looked at, and some of this is a
15 little bit of stream of consciousness, but it comes
16 together to some extent to what I think should happen
17 next, at least what I think should happen next.

18 And I started with a statement by the committee
19 of the Ninth Circuit on juries, they have a manual on jury
20 trial procedures, the Jury Instructions Committee, and
21 they say at page 132, and they cite a lot of Ninth Circuit
22 authority, I believe, upon receiving a communication from
23 a jury stating that it cannot agree, the trial court is
24 required to question the jury to determine independently
25 whether further deliberations might overcome the deadlock.

1 Questioning the foreperson individually and the jury
2 either individually or a group is satisfactory.

3 Another case says, another panel said, merely
4 questioning the jury foreperson may be insufficient. So
5 that's just a technical detail. And they even give -- and
6 this is sort of cutting to the chase here -- they even
7 give a practical suggestion. They actually give you a
8 sort of a proposed colloquy with the jury which goes along
9 like this. They call it "Procedure for determining if
10 jury is deadlocked," it's at page 134 of that same
11 document.

12 It says: "Initially the Court may ask the
13 foreperson the following questions: Is there anything
14 else the Court can do to assist in the jury's
15 deliberations? Would an additional instruction assist in
16 your deliberations? Would the reading of any testimony
17 help the jury reach a conclusion?"

18 And they go on to say: "If the foreperson's
19 response to all three questions is no, then the Court
20 should ask, quote: In your opinion, is the jury
21 hopelessly deadlocked? If the foreperson's response is
22 yes, ask the foreperson: Is there a reasonable
23 probability the jury can reach a unanimous verdict if sent
24 back to the jury room for further deliberation? If the
25 foreperson's response is no, then ask the following

1 question of each member of the panel: Do you feel there's
2 a reasonable probability that the jury can reach a
3 unanimous verdict if sent back to the jury for further
4 deliberation?"

5 And they also say the Court may wish to poll the
6 jury and record their answers, which must be yes or no.
7 And they say: "Then the Court can make a determination
8 about what its next steps are."

9 And then there's a lot of cases, there are a
10 number of cases around this point, in the Ninth Circuit,
11 where the -- just sort of distilling it all, the Ninth
12 Circuit says one of the determinations to take into
13 account is a how long is the trial, how complex are the
14 issues, and how long have they been deliberating, in
15 proportion to the first two questions. And that if --
16 unless the jury gives an indication that it is deadlocked,
17 it is inappropriate to do these inquiries because it may
18 make them deadlocked or may make a jury that's wavering go
19 one way or the other or be coercive.

20 This Court, having reviewed the authorities and
21 some of the statements of the Ninth Circuit and the
22 dictum, doesn't believe that the Allen charge is
23 appropriate in this case where we have very simple issues,
24 not a lot of testimony. The jury has asked questions that
25 are pretty much right on point in terms of the way this

1 case was tried, in terms of specific issues and one count
2 being related to another count, and I'm persuaded to some
3 extent by the Ninth Circuit's most recent pronouncement in
4 the case of *U.S. vs. Evanston*, which is cited in 2011, and
5 that was the case where the judge inquired into the
6 reasons for the deadlock, what's holding up the jury, and
7 then let the -- reopened argument and let the parties
8 argue to the jury on those points, and the jury came back
9 about with a guilty verdict, and of course, the Ninth
10 Circuit reversed that as being coercive.

11 But in the course of that holding, the Ninth
12 Circuit said at page 1085 of this decision, which is
13 651 F.3rd 1080: "Extraordinary caution must be exercised
14 when acting to break a jury deadlock. This is
15 particularly true with respect to the Court's actions in
16 giving an Allen charge, which we have recognized is
17 already standing at the brink of impermissible coercion."
18 And they quote *U.S. vs. Seawell*, S-e-a-r-i-l-l (sic),
19 Searill (sic), 550 F.2d 1159 and 1162-63, decided in 1977
20 by the Ninth Circuit.

21 So obviously we're just speculating. We don't
22 know what the jury's going to give us, but I would say
23 distilling all that, if we get a note that the jury's
24 deadlocked, I would propose to follow the colloquy that
25 the Ninth Circuit's committee on jury instructions

1 suggests and see where that takes us.

2 And interestingly enough, for obvious reasons
3 having to do with the right of appeal, most of these cases
4 come up in the context of the court deciding it's going to
5 grant a mistrial over the objection of the defendant. And
6 so the defendant says, No, you know, I shouldn't have been
7 convicted, it was coercive, and, you know, you should, you
8 know, you should have done it a different way, as opposed
9 to granting a mistrial.

10 So let me just get -- starting with the
11 government, get your reaction to what I'm saying in terms
12 of that suggestion by the Ninth Circuit committee.

13 MR. AXELROD: Well, so, just so I can track,
14 because I haven't reviewed the Ninth Circuit committee
15 instructions, the idea is to develop a factual record and
16 then make an assessment as to at that point whether any
17 further charging is appropriate?

18 THE COURT: Correct. For example, it's a fair
19 point, in that colloquy, although I think it's a little
20 ambiguous, if they say, Well, perhaps further instruction
21 from the Court might be appropriate, then the Court might
22 consider giving an Allen -- you know, the Allen charge
23 that the Ninth Circuit has approved. But it would be to
24 not assume anything and to really make sure, in an
25 incremental basis, how deadlocked, if at all, the jury is.

1 MR. AXELROD: Right. That seems like a sensible
2 thing to do. You know, I ask in part also because in the
3 cases that we reviewed, that process was not one that was
4 taken before the charge was given. So -- or at least not
5 in the ones that I reviewed. But it seems to make sense.

6 THE COURT: Mr. Weinberg?

7 MR. WEINBERG: I find it troubling, frankly, your
8 Honor.

9 THE COURT: Which part?

10 MR. WEINBERG: Well, the colloquy. Because we're
11 not talking yet about giving an Allen charge and I think
12 we're trying to avoid that.

13 The two questions, if I heard them correctly,
14 that are troublesome to me are whether the Court can do
15 anything further to assist the deliberations and would
16 further instructions help. We should only ask those
17 questions if we're willing to do what the jury wants, and
18 that's a slippery slope because if the jury says, Yeah,
19 well, we'd like to know more about such-and-such, and it's
20 an evidentiary point, whether or not we're going to give
21 them any more evidence. And -- or we like such-and-such
22 addressed, we're not going to address it.

23 And if they say -- and I don't know what the
24 point of asking them about instructions is in a case in
25 which the Court has given them the written instructions

1 because I would object to changing or altering the
2 instructions at this point. Most courts don't give the
3 jury the written instructions, or not every court gives
4 the jury written instructions, so I'm not sure that asking
5 those questions would do -- we'd either get a no, but if
6 we got a yes, I think we've opened a door we don't want to
7 walk through.

8 THE COURT: Let me follow up with you on this.
9 Let me -- let's assume hypothetically that I agree with
10 you. The -- what I would be strongly inclined to do -- in
11 fact, this seems to be almost in those cases where it was
12 error to grant a mistrial, the Court instructs the
13 District Court, that if the jury, quote-unquote, merely
14 says, We're deadlocked, the Court has a duty to poll them
15 in a yes/no type fashion so the Court doesn't get the
16 numerical scoring to jump right to the last point, which
17 is, assuming that the foreperson's answer to those
18 questions that Mr. Weinberg has concerns about, asked: Is
19 there any reasonable probability that the jury can reach a
20 unanimous verdict if sent back to the jury room for
21 further deliberations? If the foreperson says no, then I
22 would poll each juror, With a yes/no answer, do you agree
23 with that answer? Not on your own behalf but on behalf of
24 the entire jury.

25 Because I don't want to get into the individual

1 standing, and then see what the answer is there. If they
2 say -- if everybody says no, it might go one way,
3 depending upon what the parties are asking for or what
4 actions they're asking for or what the Court decides to
5 do. And if they say yes, then perhaps an Allen charge is
6 appropriate or just tell them go back and deliberate, you
7 know, and see what happens in light of -- because -- at
8 least the process has credibility and the Court has
9 credibility.

10 If they say, No, we don't think -- a particular
11 juror says, I don't think the jury is hopelessly
12 deadlocked, if I then said, I'll send you back, they'll at
13 least know why I did it as opposed to, it may be the case
14 last night when we sent them home or yesterday afternoon,
15 that they were angry about why are we doing this, in light
16 of not having made it clear.

17 That's a modification that I might make because,
18 again, I just saw this for the first time early this
19 morning, and didn't fully think about it. And I think the
20 point that defense counsel makes is well taken. Be
21 careful what you ask for. Because when -- if they say,
22 Yeah, we want all the testimony reread, and we say, Well,
23 you can't do that, and I think then you get into other
24 problems as well.

25 Let's see what happens. I'll adjourn until we

1 hear. It's a few minutes before 8:00, the jury may be
2 here. Assuming -- if there's a note that comes out -- if
3 no note comes out I think we are where we were yesterday,
4 and we'll just continue to let them deliberate. If a note
5 comes out, I'll come out and we'll see where we go from
6 there.

7 MR. AXELROD: Thank you, your Honor.

8 MR. WEINBERG: Thank you, your Honor.

9 THE COURT: All right. See you.

10 (Recess)

11 (Jury note received at 8:29 a.m.)

12 DEPUTY CLERK: Remain seated and come to order.

13 Court's again in session.

14 THE COURT: All right. So counsel's present; the
15 defendant is present.

16 We received another note from the jury dated 7/26
17 at 8:29 a.m., signed by foreperson, which says the
18 following: "The jury has completed deliberations and
19 cannot come to a unanimous verdict on any of these four
20 counts in the indictment."

21 So, based upon our previous discussion, there's
22 two options at this point. One is to bring the jury out
23 and query them, based upon what we discussed before, but
24 starting with the colloquy concerning whether the jury's
25 hopelessly deadlocked. The other alternative is to simply

1 declare a deadlock at this point without querying the
2 jury, because it might just be a futile act to do it at
3 this point given the record and the questions that have
4 been asked.

5 What's the government's position?

6 MR. AXELROD: Well, I do think that we should ask
7 the jury -- I mean, this note is clear. But I think it
8 would be appropriate to make inquiry to flesh out the
9 record and just confirm -- I mean this is the note from
10 the foreperson speaking, but I think it would be
11 appropriate to ask the questions. So option 1.

12 THE COURT: All right.

13 MR. WEINBERG: It just seems to me that the
14 foreperson chose her words very carefully this time, given
15 our ambiguity the last time, and the fact that she used
16 the phrase "completed deliberations" is a clear message,
17 so I think it would be futile to bring them out here and
18 question them, but it's up to the Court.

19 THE COURT: Let me ask, what's the defendant's --
20 is the defendant asking the Court to take any action if,
21 upon bringing the jury out, they confirm each one on
22 behalf of the entire jury that they are hopelessly
23 deadlocked, what is the -- what action, if any, is the
24 defendant asking the Court to take?

25 MR. WEINBERG: I don't know that it's the

1 defendant asking the Court. I think the Court would have
2 no choice but to declare a mistrial.

3 THE COURT: All right. And the defendant would
4 have no objection to that?

5 MR. WEINBERG: Under the circumstances, no.

6 THE COURT: All right. And I assume the
7 government wouldn't either. Or shouldn't I assume that.

8 MR. AXELROD: You know, I think that this note
9 says what it says, and they're, you know, saying they
10 can't reach a verdict. They sort of jumped a few steps
11 ahead of where we were earlier, I think, you know, without
12 the benefit of additional discussion, but you know, that's
13 where we are. So I think that's why I'd like to see what
14 the jury, you know, has to say to just confirm this.

15 THE COURT: All right. And one thing, what I
16 will do is -- I don't typically do this, but I don't get
17 many hung juries, either -- I'm going to encourage them,
18 if they choose -- obviously this has to do with whether
19 they talk to counsel, that they have the right to refuse
20 to talk to counsel -- if they wish to talk to counsel,
21 they may do so. And in these circumstances, where there
22 is a hung jury, there may be a benefit to the process and
23 to the system to talking to counsel, and even revealing --
24 I'm talking about if the Court decides to discharge the
25 jury, obviously -- to revealing where the jury, without

1 telling who the individuals were, what the numerical
2 standing of the jury was so that the parties can make
3 appropriate determinations as to what may or may not be
4 the appropriate next step.

5 Do you agree with that, Mr. Axelrod?

6 MR. AXELROD: To inquire -- assuming that you
7 were to declare a mistrial?

8 THE COURT: Yes.

9 MR. AXELROD: And then ask that question?

10 THE COURT: Not ask the question but urge them to
11 talk to counsel.

12 MR. AXELROD: Absolutely.

13 THE COURT: Do you agree with that?

14 MR. WEINBERG: Agreed.

15 THE COURT: Okay. Let's get the jury in then.

16 DEPUTY CLERK: All rise for the jury.

17 (The jury enters the courtroom.)

18 THE COURT: Please be seated.

19 Good morning, everybody. Ladies and gentlemen of
20 the jury, the Court has and the parties have received your
21 latest note as well as the rest of your notes, and there
22 is a procedure that the Court will follow in light of the
23 last note that you have issued or sent out to the Court.

24 So I'd like to start by asking for the foreperson
25 to please rise. Good morning.

1 THE FOREPERSON: Good morning.

2 THE COURT: What I'm going to do, just so you
3 know, I'm going to ask the foreperson some questions, a
4 question, and then maybe more than one question, and then
5 I'm going to ask other questions to each member of the
6 jury panel. And that's the proper procedure to follow
7 here.

8 So madam foreperson, in your opinion, is the jury
9 hopelessly deadlocked?

10 THE FOREPERSON: Yes, sir.

11 THE COURT: Is there a reasonable probability
12 that the jury can reach a unanimous verdict if sent back
13 to the jury room for further deliberations?

14 THE FOREPERSON: No, your Honor.

15 THE COURT: Thank you very much.

16 Let me start with, I'll skip the foreperson
17 because I've already asked the questions, I'm going to go
18 to each juror and ask the following questions. I'd ask
19 you to please stand when I ask the question.

20 So Juror Number 1, good morning.

21 JUROR NUMBER 1: Good morning.

22 THE COURT: Do you feel that there's a reasonable
23 probability that the jury can reach a unanimous verdict if
24 sent back to the jury room for further deliberations?

25 JUROR NUMBER 1: No, your Honor.

1 THE COURT: Thank you very much.

2 Juror Number 2. Do you feel there's a reasonable
3 probability that the jury can reach a unanimous verdict if
4 sent back to the jury room for further deliberation?

5 JUROR NUMBER 2: No.

6 THE COURT: Juror Number 3, do you feel there's a
7 reasonable probability that the jury can reach a unanimous
8 verdict if sent back to the jury room for further
9 deliberation?

10 JUROR NUMBER 3: No, your Honor.

11 THE COURT: Next person. Juror Number 4, good
12 morning.

13 JUROR NUMBER 4: Good morning.

14 THE COURT: Do you feel there's a reasonable
15 probability that the jury can reach a unanimous verdict if
16 sent back to the jury room for further deliberation?

17 JUROR NUMBER 4: No, your Honor.

18 THE COURT: Juror Number 5. Good morning. Do
19 you feel there is a reasonable probability that the jury
20 can reach a unanimous verdict if sent back to the jury
21 room for further deliberation?

22 JUROR NUMBER 5: No, your Honor.

23 THE COURT: Juror Number 6. Good morning.

24 JUROR NUMBER 6: Good morning.

25 THE COURT: Do you feel there's a reasonable

1 probability the jury can reach a unanimous verdict if sent
2 back to the jury room for further deliberation?

3 JUROR NUMBER 6: No, your Honor.

4 THE COURT: Juror Number 7. That's you. Good
5 morning. Do you feel there's a reasonable probability
6 that the jury can reach a unanimous verdict if sent back
7 to the jury room for further deliberation?

8 JUROR NUMBER 7: No, your Honor.

9 THE COURT: Juror Number 9. Do you feel there's
10 a reasonable probability that the jury can reach a
11 unanimous verdict if sent back to the jury room for
12 further deliberation?

13 JUROR NUMBER 9: No, your Honor.

14 THE COURT: Juror Number 10. Do you feel -- good
15 morning.

16 JUROR NUMBER 10: Good morning.

17 THE COURT: Do you feel there's a reasonable
18 probability that the jury can reach a unanimous verdict if
19 sent back to the jury room for further deliberation?

20 JUROR NUMBER 10: No, your Honor.

21 THE COURT: Juror Number 11. Good morning. Do
22 you feel there's a reasonable probability that the jury
23 can reach a unanimous verdict if sent back to the jury
24 room for further deliberation?

25 JUROR NUMBER 11: No, your Honor.

1 THE COURT: And Juror Number 12. Good morning.

2 JUROR NUMBER 12: Good morning.

3 THE COURT: Do you feel there's a reasonable
4 probability that the jury can reach a unanimous verdict if
5 sent back to the jury room for further deliberation?

6 JUROR NUMBER 12: No, your Honor.

7 THE COURT: Thank you very much.

8 Anything further that counsel wishes me -- the
9 Court to inquire?

10 MR. AXELROD: No, your Honor.

11 MR. WEINBERG: No.

12 THE COURT: So at this point, ladies and
13 gentlemen, what I'm going to do is, which is what the law
14 allows or even requires in a situation like this, the
15 Court is going to declare a mistrial and hereby does
16 declare a mistrial, and just associated with that, and
17 finds that there's a manifest necessity to declare a
18 mistrial, in the interest of justice, require that the
19 Court declare a mistrial.

20 And upon doing that, I'm going to be just
21 momentarily discharging you and saying that the Court
22 never comments on the ultimate determination that a jury
23 makes or doesn't make because that's uniquely your
24 responsibility, your job, and there's no right answer,
25 there's no wrong answer. Whatever did you is right

1 because that's what -- you are the jury. You're the
2 judges of the facts. So the Court never comments on
3 anything that a jury does.

4 But the Court does want to say that on behalf of
5 the Court and the judicial system and the parties, the
6 Court wants to thank you for your hard work, you were very
7 diligent, you were punctual, and you even laughed at my
8 jokes, which, you know, shows that it's good to have a
9 captive audience, but seriously, you've really shown that
10 you are -- took what the Court said seriously in your
11 duties as a citizen and you've done your duties as
12 citizens.

13 Now, before I finally excuse you -- and by the
14 way, this has to do with excusing you, once I excuse you,
15 obviously you're free to go, you're free to discuss the
16 case with anybody you want. Now you can do research. All
17 the things I told you you can't do, LinkedIn and all those
18 other things that I can't remember, but they're all
19 important, you can do.

20 But one important thing is, frequently at the end
21 of a case, whether there's a verdict or as in this case
22 not a verdict, counsel wishes to talk to the -- to you.
23 And you have -- I always tell jurors that they are free to
24 discuss the case with counsel or not. It's up to them,
25 obviously. In a case like this where there has been --

1 the jury has not agreed on a verdict, I think it's
2 important to the system and important to the parties to
3 know if any or all of the jurors are willing to tell the
4 lawyers, after I discharge you, what was the ultimate
5 numerical breakdown -- and I would caution you against,
6 unless you want to, it's up to you, talking about what
7 your particular position was. And the reason for that is,
8 parties, once a case is over in this fashion, have to make
9 the decision, as does the Court, on whether the case is
10 going to be tried again. And the level of agreement or
11 disagreement numerically or otherwise that the jury has
12 experienced is a -- may be a guiding factor for the
13 parties.

14 So what I will do is, we'll leave the courtroom
15 open, and if you wish -- after you go back to the jury
16 room, if you wish to leave, you can leave. If you wish to
17 talk to counsel either now or at a later time, or now, you
18 can come back into the courtroom and I'll allow you to
19 talk to counsel as short or as long as you want with the
20 understanding that it's up to you and you're free to say
21 whatever you wish to say.

22 And we had very high quality, very highly
23 professional and ethical counsel in this case, and in some
24 sense you may be spoiled because you actually saw very
25 good counsel trying a case at the highest level of the

1 system and their profession. So there's no fear of
2 anything improper happening here with these lawyers. Feel
3 free to say whatever you want.

4 But the Court does very, very profoundly want to
5 thank each of you. I know this was -- I know this was a
6 great hardship for some of you. And somewhat of a
7 hardship for others. But I hope you feel like this is a
8 learning experience for you in terms of how does the
9 system operate, how is it supposed to operate, and why we
10 do what we do, and why our system is unique in the world
11 for the system we have of having everyday citizens, peers,
12 if you will, of the parties, of the defendant, deciding
13 these important factors and not leading into judges or
14 people who are appointed or elected. It's a very
15 important part of our system and what makes our country
16 great.

17 Thank you very much for your service, and you're
18 now excused and discharged.

19 And if you wish to come back in the courtroom,
20 counsel will wait for you for a reasonable period of time.

21 (The jury exits the courtroom.)

22 THE COURT: Counsel, would you come back to
23 counsel table. I want to make sure that the responses of
24 the jurors represent their juror numbers and not their
25 seat numbers. I think they're the same. They're not the

1 same. The court reporter is nodding yes.

2 Please, silence, please. We're still in session.

3 All right. A couple of housekeeping points.

4 The first is I would order that all of the
5 exhibits be returned to the government since they're all
6 government exhibits.

7 The second thing is, I would like to set a status
8 within -- I'll ask the government and defense counsel,
9 mostly the government, how much time you would need to
10 figure out what the government would like to do next, and
11 then come back here on a regular Thursday --

12 Oh, Mr. Cook, you're here. Thank you (he came
13 back in room).

14 -- and decide how long we should wait for a
15 status.

16 What's your position, Mr. Axelrod?

17 MR. AXELROD: What we'd like to do is come back
18 next Thursday and decide how to proceed.

19 THE COURT: All right.

20 MR. WEINBERG: Let me just check my calendar. I
21 could be here by 2:30 on Thursday.

22 THE COURT: Let me ask, Miss Ottolini, do we have
23 matters on calendar?

24 DEPUTY CLERK: We do have matters on our
25 calendar. I believe we have enough to keep us busy.

1 THE COURT: All right. So that's fine, 2:30 is
2 fine for this case. And I would ask that next Wednesday,
3 24 hours in advance, the government file either a joint
4 status or separate status so the Court -- if there's going
5 to be a matter of scheduling, then I'll be able to talk to
6 my staff about when would be appropriate. In other words,
7 for example, one alternative is the government believes
8 that it can and should try this case again, then either
9 we're going to -- we'll set a trial date and pretrial, or
10 to the extent that the defendant feels that's not
11 appropriate, as a matter of law, then you can set a
12 briefing schedule. But I'd like to get a sense from the
13 parties of what their respective positions are so that I
14 can plan for it at least 24 hours in advance.

15 So is that acceptable to the government?

16 MR. AXELROD: Yes, it is, your Honor.

17 THE COURT: And to the defense?

18 MR. WEINBERG: Sure.

19 THE COURT: Anything further from the government?

20 MR. AXELROD: No, your Honor. Thank you.

21 MR. WEINBERG: No, your Honor.

22 THE COURT: And once again, I want to compliment
23 counsel for trying excellent cases on both sides. It was
24 done very well, and these things happen and that's why we
25 have a jury system, and we'll see where we go from here.

1 Thank you very much.

2 MR. AXELROD: Thank you.

3 (Adjourned)

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12 CERTIFICATE OF REPORTER

13 I, Connie Kuhl, Official Reporter for the United
14 States Court, Northern District of California, hereby
15 certify that the foregoing proceedings were reported by
16 me, a certified shorthand reporter, and were thereafter
17 transcribed under my direction into written form.

18 

19 _____
20 Connie Kuhl, RMR, CRR
21 Monday, August 6, 2012
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